

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2596

By Delegates Toney, Statler, Vance, Ellington,

Cooper, Shamblin, Foggin, and Heckert

[Introduced January 17, 2023; Referred to the

Committee on Education]

1 A BILL to amend and reenact §18-5-16 of the Code of West Virginia, 1931, as amended, relating to
2 denying transfers to other schools by students who are suspended or expelled from a
3 school for certain conduct.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-16. Student transfers; definitions; appeals; calculating net enrollment; fees for transfer.

1 (a) *Establishment of attendance zones within counties.* — The county board may establish
2 attendance zones within the county to designate the schools that its resident students shall attend.
3 Upon the written request of any parent or guardian, or person legally responsible for any student,
4 or for reasons affecting the best interests of the schools, the superintendent may transfer students
5 from one school to another within the county. Any aggrieved person may appeal the decision of the
6 county superintendent to the county board, and the decision of the county board is final.

7 (b) *Definitions.* — For the purposes of this section, unless a different meaning clearly
8 appears from the context:

9 "DFR" means a Disciplinary Referral Form system used in §18A-5-1a of this code.

10 ~~(1)~~-"Nonresident student" means a student who resides in this state and who is enrolled in
11 or is seeking enrollment in a county school district other than the county school district in which the
12 student resides.

13 ~~(2)~~-"Open enrollment" means a policy adopted and implemented by a county board to allow
14 nonresident students to enroll in any school within the district. Open enrollment is distinct from a
15 mutual agreement of two county boards regarding mass transfer of students, as contemplated in
16 §18-5-13(f)(1)(C) of this code.

17 (c) *Enrollment policies.* — County boards shall establish and implement an open
18 enrollment policy without charging tuition and without obtaining approval from the board of the
19 county in which a student resides and transfers. This policy shall clearly outline the application

20 process nonresident students are to follow. Enrollment policies are subject to the following:

21 (1) A county board may give enrollment preference to:

22 (A) Siblings of students already enrolled through the open enrollment policy;

23 (B) Secondary students who have completed 10th grade and, due to family relocation,
24 become nonresident students, but express the desire to remain in a specific school to complete
25 their education;

26 (C) Students who are children, grandchildren, or legal wards of employees;

27 (D) Students whose legal residences, though geographically within another county, are
28 more proximate to a school within the receiving county, whether calculated by miles or
29 transportation time;

30 (E) Students who reside in a portion of a county where topography, impassable roads, long
31 bus rides, or other conditions prevent the practicable transportation of the student to a school
32 within the county, and a school within a contiguous county is more easily accessible; and

33 (F) The county board to which the student wishes to be transferred may not refuse a
34 transfer by virtue of the student transferring from a private, parochial, church, or religious school
35 holding an exemption approved pursuant to §18-8-1(k) of this code: *Provided*, That nothing in this
36 paragraph shall be construed to allow a county board to give an enrollment preference to a student
37 transferring from a private, parochial, church, or religious school holding an exemption approved
38 pursuant to §18-8-1(k) of this code.

39 (2) A county ~~must~~ shall comply with all enrollment requirements for children who are in
40 foster care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento
41 Homeless Assistance Act (42 U.S.C. § 11434a(6)).

42 (3) The county board for the county educating the nonresident student may provide an
43 adequate means of transportation to nonresident students when students have complied with the
44 procedure for obtaining authorization to attend school outside their county of residence, subject to
45 the following:

46 (A) County boards of education are not required to uniformly provide nonresident student
47 transportation, and may consider whether a nonresident student meets the eligibility criteria for
48 free or reduced price lunch and milk established within the Richard B. Russell National School
49 Lunch Act (42 U.S.C. § 1758); and

50 (B) The county board for the county educating the nonresident student shall provide
51 transportation to and from the school of attendance, or to and from an agreed pickup point on a
52 regular transportation route, or for the total miles traveled each day for the nonresident student to
53 reach the school of enrollment if the nonresident student is a student with disabilities and has an
54 individualized education program that specifies that transportation is necessary for fulfillment of
55 the program.

56 (4) An application may ~~only~~ be denied by a county board of education due to (1) lack of
57 grade level capacity, or (2) if the nonresident student failed to fill out or submit the application
58 correctly, or (3) if a student has been suspended or expelled for a level (iii) offense or a level (iv)
59 offense as described in the disciplinary referral form (DFR) system in §18A-5-1a(c) of this code.

60 The denial shall be in writing, sent to the parent or guardian of the nonresident student and the
61 West Virginia Department of Education within three business days of the decision, and include the
62 reason and explanation for the denial and information on appealing the denial of the application.

63 (d) *Appeal*. — The State Board of Education shall establish a process whereby a parent or
64 guardian of a student may appeal to the State Superintendent the refusal of a county board to
65 accept the transfer of the student. If during the appeal process, the State Superintendent
66 discovers that the education and the welfare of the student could be enhanced, the State
67 Superintendent may direct that the student may be permitted to attend a school in the receiving
68 county. The State Board of Education may review, on a yearly basis, the denial for transfer based
69 on the reasons in subsection (c)(4) of this section.

70 (e) *Net enrollment*. — For purposes of net enrollment as defined in §18-9A-2 of this code,
71 whenever a student is transferred on a full-time basis from one school district to another district

72 pursuant to the provisions of this section, the county to which the student is transferred shall
73 include the student in its net enrollment, subject to the following:

74 (1) If a student transfers after the second month of any school year, the county to which the
75 student transferred may issue, in the following fiscal year, an invoice to the county from which the
76 student transferred for the amount, determined on a pro rata basis, that the county now
77 responsible for educating the student otherwise would have received under the state basic
78 foundation program established in §18-9A-1 *et seq.* of this code had such student been included in
79 the county's prior year's net enrollment;

80 (2) If a student in grades kindergarten through 12 transfers after the second month of any
81 school year, the county to which the student transferred may issue, in the following fiscal year, an
82 invoice to the county from which the student transferred for the amount the county now
83 responsible for educating the student otherwise would have received under aid to exceptional
84 students had such student been included in the county's prior year's child count enrollment;

85 (3) If a student in prekindergarten transfers after the child count of exceptional students is
86 certified for any school year, the county to which the student transferred may issue, in the following
87 fiscal year, an invoice to the county from which the student transferred for the amount the county
88 now responsible for educating the student otherwise would have received under aid to exceptional
89 students had such student been included in the county's prior year's child count enrollment; and

90 (4) The county from which the student transferred shall reimburse the county to which the
91 student transferred for the amount of the invoice.

92 (f) *Transfers between states.* — Transfer of students from this state to another state shall
93 be upon such terms, including payment of tuition, as shall be mutually agreed upon by the board of
94 the receiving county and the authorities of the school or district from which the transfer is made.

95 (g) No parent, guardian, or person acting as parent or guardian is required to pay for the
96 transfer of a student or for the tuition of the student after the transfer when the transfer is carried
97 out under the terms of this section.

98 (h) Nothing in this section supersedes the eligibility requirements for participation in extra-
99 curricular activities established by the Secondary School Activities Commission.

100 (i) The amendments to this section during the 2019 First Extraordinary Session of the
101 Legislature shall be effective for school years beginning on or after July 1, 2020, and the
102 provisions of this section existing immediately prior to the 2019 First Extraordinary Session of the
103 Legislature remain in effect for school years beginning prior to July 1, 2020.

NOTE: The purpose of this bill is to deny transfers to other schools by students who are suspended or expelled from a school for certain conduct.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.